

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>BOBBY L. WILLIAMS</b>	)	
Claimant	)	
VS.	)	
	)	
<b>BEN SCHREINER CONSTRUCTION</b>	)	Docket Nos. 228,740 &
Respondent	)	241,825
AND	)	
	)	
<b>ALLIED MUTUAL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

<b>BOBBY L. WILLIAMS</b>	)	
Claimant	)	
VS.	)	
	)	
<b>BAHM CONSTRUCTION</b>	)	Docket No. 230,901
Respondent	)	
AND	)	
	)	
<b>FARM BUREAU MUTUAL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent Ben Schreiner Construction appeals from the June 29, 1999, Order of Administrative Law Judge Bryce D. Benedict wherein claimant was granted benefits in the form of temporary total disability compensation and medical treatment in Docket No. 241,825.

**ISSUES**

- (1) Did claimant suffer accidental injury on the date or dates alleged?
- (2) Did claimant's accidental injury or injuries arise out of and in the course of his employment with respondent, Ben Schreiner Construction?

- (3) Did claimant provide timely notice of accidental injury?
- (4) Was timely written claim submitted?
- (5) What is the proper date of accident in this case?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds as follows:

Claimant filed multiple claims against both respondents for injuries to his left knee, right knee, right hip and lower extremity, and low back. A Motion to Consolidate was filed by claimant with the Division of Workers Compensation on April 26, 1999. The Order granting claimant's motion was signed by the Administrative Law Judge on May 18, 1999, consolidating Docket Nos. 228,740, 230,901 and 241,825. There is no indication in the file that that Order consolidating these cases has ever been rescinded. The preliminary hearing Order signed by the Administrative Law Judge lists only Docket No. 241,825 in the heading and lists only Ben Schreiner Construction and Allied Mutual Insurance Company as respondent and insurance carrier. However, at the bottom of the Order, the last sentence states "[t]his order for compensation does not apply to Docket Nos. 228,740 and 230,901."

This implies that the claimant's requests for any compensation against Ben Schreiner Construction in Docket No. 228,740 and against respondent Bahm Construction in Docket No. 230,901 were denied.

The Appeals Board has held in the past, and continues to hold, that when cases are consolidated but only one docket number is appealed, all docket numbers are appealed, absent an order rescinding the original order for consolidation. Therefore, the Appeals Board will consider the claims against not only respondent Ben Schreiner Construction and Allied Mutual Insurance Company, but also the claim against respondent Bahm Construction and Farm Bureau Mutual Insurance Company.

Claimant suffered numerous injuries while working construction for both respondents. In Docket No. 228,740, claimant suffered accidental injury on January 7, 1997, when he injured his left knee while working for Ben Schreiner Construction. This injury is not disputed by respondent Ben Schreiner Construction. On October 1, 1997, while working for Bahm Construction, claimant suffered injury to his right knee. However, claimant alleges that this injury occurred as a result of his left knee giving out, and the claim was brought against Ben Schreiner Construction rather than against Bahm Construction. In Docket No. 230,901, claimant alleged accidental injury on November 21,

1997, against Bahm Construction when he suffered an injury to his right hip and bilateral knees.

Finally, in Docket No. 241,825, claimant alleges accidental injury against respondent Ben Schreiner Construction claiming a series of traumatic injuries through his last day worked on about February 4, 1999, with the injuries including both knees and lower extremities and the low back.

In reviewing claimant's lengthy testimony and the substantial medical evidence, the Appeals Board notes numerous contradictions. Claimant's testimony was in conflict at one time or another with almost every doctor who examined him, including Dr. Edward Prostic, Dr. Kurt Knappenberger, Dr. Roy Hall, Dr. Sharon McKinney and the records from St. Francis Hospital and Medical Center. However, it is noted that claimant admitted on several occasions that he is confused by times and dates and by the entire workers' compensation process as a whole.

The Appeals Board finds most convincing claimant's testimony regarding his return to work with respondent Ben Schreiner Construction in June 1998. While working for Ben Schreiner Construction, his knee and hip conditions continued to worsen, with the symptoms proceeding down into the right lower leg. Claimant described numbness and tingling in his toes and, by February 1999, was experiencing a severe leg drag on the right side. Claimant worked for respondent Ben Schreiner Construction until approximately February 4, 1999, at which time he received the results of an MRI. The MRI indicated claimant had degenerative disc disease with a bulging disc at L4-L5. Claimant was surprised to learn that his condition involved not only his hip and leg, but also his low back.

When claimant discussed this condition with his then employer Ben Schreiner Construction, he was unable to identify any accident which may have caused the injury. Respondent Ben Schreiner Construction argues that claimant denied an accidental injury at that time. That denial on claimant's part would be consistent with his being unaware of any back problems. The fact that the symptoms manifested in his hip and leg would be confusing to an uneducated manual laborer. Claimant's denial of a back injury at that time would also be consistent with his lack of understanding of the medical processes involving damage to the neurological systems in the human body. However, claimant's testimony is consistent that his condition continued to worsen during his last period of employment with Ben Schreiner Construction from June 1998 through his last day of February 4, 1999. This testimony is sufficiently convincing to the Appeals Board to find that claimant did suffer an aggravation of his preexisting conditions, including the low back, right hip and right lower extremity, while working for respondent Ben Schreiner Construction with the date of accident being the last day worked of February 4, 1999. As respondent Ben Schreiner Construction admits claimant discussed with him the details of the MRI and his ongoing difficulties at that time, the Appeals Board also finds that timely notice was provided for a date of accident of February 4, 1999. Claimant's written claim was

submitted to respondent's counsel by letter dated February 10, 1999, and the E-1 Application for Hearing was filed with the Division of Workers Compensation on February 18, 1999, both within 200 days of the date of accident. The Appeals Board, therefore, finds that written claim was timely submitted pursuant to K.S.A. 44-520a. Benefits in Docket Nos. 228,740 and 203,901 are denied.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated June 29, 1999, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1999.

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BOARD MEMBER

c: Beth Regier Foerster, Topeka, KS  
Bret C. Owen, Topeka, KS  
Patrick M. Salsbury, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director